

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION

EDWARD RANDOLPH
TURNBULL IV,
Plaintiff,

v.

COMMISSION FOR LAWYER
DISCIPLINE; THE OFFICE OF THE
CHIEF DISCIPLINARY COUNSEL;
SEANA WILLING, in her Official
Capacity as Chief Disciplinary Counsel of
the State Bar of Texas, and in her
individual capacity; AMANDA M.
KATES, in her Official Capacity as
Assistant Disciplinary Counsel for the
Office of the Chief Disciplinary Counsel,
and in her individual capacity; JOHN S.
BRANNON, in his official capacity as
Assistant Disciplinary Counsel for the
Office of the Chief Disciplinary Counsel,
and in his individual capacity; TIMOTHY
J. BALDWIN, in his official capacity as
Administrative Attorney for the Office of
the Chief Disciplinary Counsel, and in his
individual capacity; DANIEL
MARTINEZ, in his official capacity as
Assistant Disciplinary Counsel for the
Office of the Chief Disciplinary Counsel,
and in his individual capacity; DANIELA
GROSZ, in her official capacity as
Assistant Disciplinary Counsel for the
Office of the Chief Disciplinary Counsel,
and in her individual capacity; JENNY
HODGKINS, in her official capacity as the
Executive Director & General Counsel
with the Board of Disciplinary Appeals,
and in her individual capacity; Laura
Gibson, Cindy V. Tisdale, Sylvia Borunda
Firth, Benny Agosto, Jr., David N.
Calvillo, Elizabeth Sandoval Cantu, Luis
Cavazos, Craig Cherry, Jason
Charbonnet, Kelly-Ann F. Clarke, Jeff
Cochran, David C. Courreges, Thomas A.

CASE NO. 1:23-cv-00314

JURY TRIAL DEMANDED

**Crosley, Steve Fischer, Lucy Forbes, §
Gregory M. Fuller, August W. Harris III, §
Matthew J. Hill, Forrest L. Huddleston, §
Lori M. Kern, Modinat Kotun, Bill §
Kroger, Dwight McDonald, Carra Miller, §
Lawrence Morales II, Lydia Elizondo §
Mount, Kimberly M. Naylor, Jeanine §
Novosad Rispoli, Michael J. Ritter, Audie §
Sciumbato, Mary L. Scott, John Sloan, D. §
Todd Smith, G. David Smith, Paul K. §
Stafford, Alex J. Stelly Jr., Nitin Sud, §
Radha Thiagarajan, Robert L. Tobey, §
Aaron Z. Tobin, Andrew Tolchin, G. §
Michael Vasquez, Kimberly Pack Wilson, §
and Kennon L. Wooten in their official §
capacities as Members of the Board of §
Directors of the State Bar of Texas, §
Defendants. §**

PLAINTIFF'S RESPONSE TO COURT'S MAY 25, 2023 SHOW CAUSE ORDER

TO THE HONORABLE JUDGE ROBERT PITMAN:

COMES NOW, Plaintiff, Edward Randolph Turnbull IV (“Plaintiff”), and files this Plaintiff’s Response to Court’s May 25, 2023, Show Cause Order.

On May 25, 2023, this Court issued an Order requiring Plaintiff to either (1) file a response to Defendants’ motion to dismiss on or before June 8, 2023, or (2) show cause in writing on or before June 8, 2023, as to why the Court should not dismiss this case for want of prosecution. *See* Order – Doc. 18.

The motion to dismiss to which the Court refers in the show cause Order is Defendants’ Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), filed by Defendants Commission for Lawyer Discipline and Seana Willing, the Chief Disciplinary Counsel on May 5, 2023 (“CFLD/CDC Motion”). Under Local Rule CV-7, a response to the CFLD/CDC

Motion would have been due 14 days later, on May 19, 2023, “except as provided by Rule CV-15.” *See* Local Rule CV-7.D.2.

The Plaintiff opted to respond to the CFLD/CDC Motion in accordance with Local Rule CV-15, which states:

Notwithstanding the time limits provided in Rule CV-7, a party may respond to a first motion under Federal Rule of Civil Procedure 12(b) by filing an amended pleading as a matter of course not later than 21 days after the filing of the motion. See FED. R. CIV. P. 15.”

Local Rule CV-15.a (emphasis added).

In compliance with Local Rule CV-15, Plaintiff filed his First Amended Complaint in this case on May 25, 2023 – less than 21 days after the filing of the CFLD/CDC Motion.

Thus, good cause exists because Plaintiff timely responded to the CFLD/CDC Motion by filing an amended complaint in accordance with Local Rule CV-15. Moreover, good cause exists for not dismissing this case because the CFLD/CDC Motion upon which the show cause Order was based has been superseded, first by the filing of Plaintiff’s First Amended Complaint, and now by the filing of Defendants, Commission for Lawyer Discipline and Seana Willings’, First Amended Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) (CFLD/CDC Amended Motion). *See* Amended Motion filed on May 31, 2023 – Doc. 22. Under Local Rule CV-7, Plaintiff’s response to the CFLD/CDC Amended Motion is due to be filed on June 14, 2023. *See* Local Rule CV-7.D.2.

On June 1, 2023, Defendants Daniela Grosz and Daniel Martinez likewise filed their First Amended Motion to Dismiss, directed to the Plaintiff’s First Amended Complaint. *See* Grosz/Martinez Amended Motion – Doc. 24. Although the other defendants who previously filed motions to dismiss have not yet filed motions to dismiss the Plaintiff’s First Amended Complaint, all of the following motions to dismiss directed to the Original Complaint should be denied as moot:

Dkt. 10: Defendants' Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) – filed by Defendants Commission for Lawyer Discipline and Seana Willing, the Chief Disciplinary Counsel – May 5, 2023

Dkt. 12: Defendants State Bar Board of Directors' Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) – May 10, 2023

Dkt. 15: Defendant Brannon's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) – May 24, 2023

Dkt. 16: Defendants, D. Grosz and Daniel Martinez's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) – May 25, 2023

Dkt. 17: Defendant Kate's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) – May 25, 2023

See Serafine v. Abbott, No. 1:20-CV-1249-RP, 2021 U.S. Dist. LEXIS 156554, at *6, 2021 WL 3616103 (W.D. Tex. July 2, 2021) (holding that defendants' motions to dismiss were moot because they refer to a superseded pleading).

Because Plaintiff complied with the time period prescribed by Local Rules CV-7 and CV-15, and because Plaintiff's response to the CFLD/CDC Amended Motion is not due until June 14, 2023, and Plaintiff's response to the Grosz/Martinez Amended Motion is not due until June 15, 2023, good cause exists for not dismissing this case.

Respectfully submitted,

WEST, WEBB, ALLBRITTON & GENTRY, P.C.
1515 Emerald Plaza
College Station, Texas 77845
Telephone: (979) 694-7000
Facsimile: (979) 694-8000

By: /s/ Gaines West
GAINES WEST
State Bar No. 21197500
Email ~ gaines.west@westwebblaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of this document upon each attorney of record through the Court's ECF system on this the 1st day of June 2023.

/s/ Gaines West
GAINES WEST